

PURCHASE ORDER TERMS AND CONDITIONS

1. **Offer/Acceptance.** If this purchase order refers to your bid or proposal, then this purchase order is an ACCEPTANCE of your OFFER TO SELL in accordance with the terms and conditions of the IFB/RFP, as stated in your bid. If no bid or proposal is referenced, the purchase order is an OFFER TO BUY, subject to your acceptance, which must be demonstrated by either your performance of the purchase order or by a formal acknowledgment in writing. Any COUNTER-OFFER TO SELL is automatically construed as a CANCELLATION of this purchase order unless a change order is issued accepting a counter-offer. In the event vendor form(s) or part(s) of forms are included in, or as an attachment to, any bid, proposal, offer, acknowledgment, or otherwise, vendor agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document and this purchase order shall supersede and control over those contained in the vendor's form(s) regardless of any statement to the contrary in a vendor form(s). Unless the purchasing agent specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

2. **Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this purchase order must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Bidders must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. **Changes.** The vendor agrees to furnish the products and/or services in strict accordance with the specifications, and at the price set forth for each item. Nothing in the purchase order may be added to, modified, superseded or otherwise altered except in writing signed by an authorized representative of the state agency purchasing office and acknowledged by the vendor. Each shipment received or service performed shall be only upon the terms contained in the purchase order, notwithstanding any terms that may be contained in any invoice or other act of vendor other than acknowledgment of a written change order to the purchase order.

4. **Delivery.** Unless otherwise specified, in the solicitation or in this order, delivery shall be F.O.B. destination. In its acceptance of any quotation offer, the state agency is relying on the promised delivery date, installation, or service performance as material and basic to its acceptance. In the event of vendor's failure to deliver or perform as and when promised, the state agency reserves the right to cancel its order, or any part thereof, without prejudice to its other rights, and vendor agrees that the state agency may return all or part of any shipment so made, and may charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. **Rights In Data, Documents, and Computer Software or Other Intellectual Property (State Ownership).** Unless otherwise agreed in writing, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials delivered by vendor in the performance of its obligations under this purchase order shall be the exclusive property of the State. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

6. **Quality.** The State will be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.

7. **Warranties.** All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made a part of these Terms and Conditions and are in addition to any warranties stipulated in the specifications.

8. **Inspection and Acceptance.** Final acceptance is dependent upon completion of all applicable inspection procedures. Should the products or services fail to meet any inspection requirements the State may exercise all of its rights, including those provided in the Uniform Commercial Code. In the case of services, the State reserves the right to inspect services provided under this contract at all reasonable times and places. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with purchase order requirements, the State may require the vendor to perform the services again in conformity with purchase order requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the vendor to take necessary action to ensure that the future performance conforms to purchase order requirements and (2) equitably reduce the payment due the vendor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this purchase order, or remedies otherwise available at law.

9. **Cash Discount.** The cash discount period will start from date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized agency representative, whichever is later.

10. **Taxes.** The state agency, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. 39- 26- 114(a) and 203, as amended]. Tax exempt numbers for the specific state agency may be found elsewhere in this document. Vendor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions (for example - City of Denver) the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

11. **Prompt Payment.** State law and regulations provide that vendors will be paid within forty-five days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by contract or special conditions of the purchase order. A State liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Vendors shall invoice the State separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate. [Ref. Sec 24-30-202(24), C.R.S., as amended.]

12. **Vendor Offset.** Pursuant to CRS 24-30-202.4, as amended, the State Controller may withhold payment for debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the State Controller.

13. **Assignment and Successors; Antitrust Claims.** The vendor shall not assign rights or delegate duties under this purchase order, or subcontract any part of the performance required under the purchase order, without the express, written consent of the State, which shall not be unreasonably withheld. This purchase order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Assignment of accounts receivable may be made only with written notice furnished to the purchasing agency or institution.

14. **Indemnification.** In the event any article sold or delivered under this purchase order is covered by any patent, copyright, trademark, or application therefor, the vendor will indemnify and hold harmless the State of Colorado from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions, or judgments arising out of manufacture, sale or use of such article in violation, infringement or the like of rights under such patent, copyright, trademark or application. If this purchase order is for services, to the extent authorized by law, the vendor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the vendor, or its employees, agents, subcontractors or assignees arising out of or in connection with performance of services ordered by this purchase order.

15. **INDEPENDENT CONTRACTOR.** THE VENDOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE VENDOR NOR ANY AGENT OR EMPLOYEE OF THE VENDOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. VENDOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS CONTRACT. VENDOR ACKNOWLEDGES THAT THE VENDOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE VENDOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. VENDOR SHALL HAVE NO AUTHORIZATION EXPRESS OR IMPLIED TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. VENDOR SHALL PROVIDE AND KEEP IN FORCE, WORKERS' COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE UPON REQUEST) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF VENDOR, ITS EMPLOYEES, AND AGENTS.

16. **Communication.** All communications, including reports, notices, and advice of any nature, concerning administration of this purchase order, prepared by vendor for the state agency's use, must be furnished solely to the Purchasing Agent within the agency purchasing office.

17. **Compliance with Laws.** Vendor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back and collusion.

18. **Americans with Disabilities Act (ADA) Requirements.** If this solicitation contemplates the provision of state services to the public, the vendor shall, in addition to any other requirements under Title 11 of the Americans with Disabilities Act, comply with the Title 11 requirements of the Americans with Disabilities Act regarding the accessibility of the State's services and programs, as an explicit requirement. The vendor assures that, at all times during the performance of any resulting contract, no qualified individual with a disability shall, by reason of that disability, be excluded from participation in, or be denied benefits of, services, programs, or activities performed by the vendor for the benefit of the State.

19. **Insurance.** The vendor shall obtain, and maintain at all times during the term of this purchase order, insurance as specified in the solicitation or order, and shall provide proof of such coverage.

20. Termination For Default/Cause.

a. Except as otherwise agreed, the Uniform Commercial Code shall govern in the case of transactions in goods. In the case of services, if the vendor refuses or fails to timely perform any of the provisions of this purchase order, with such diligence as will ensure its completion within the time specified in this purchase order, the Purchasing Agent may notify the vendor in writing of the non-performance, and if not promptly corrected within the time specified, such officer may terminate the vendor's right to proceed with the purchase order or such part of the purchase order as to which there has been delay or a failure to properly perform. The vendor shall continue performance of the purchase order to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the purchase order price.

b. In the case of remedies exercised under this paragraph for services, or analogous remedies exercised under the Uniform Commercial Code for transactions in goods, the purchasing agency may withhold amounts due to the vendor as the Purchasing Agent deems to be necessary to reimburse the purchasing agency for the excess costs incurred in curing, completing or procuring similar goods and services.

c. In the case of either transactions in goods or services, the vendor shall not be in default by reason of any failure in performance of this purchase order in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

d. If after rejection, revocation, or other termination of the vendor's right to proceed under the provisions of the Uniform Commercial Code (in the case of transactions in goods) or this clause (in the case of services), it is determined for any reason that the vendor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

21. Termination For Convenience.

a. Cancellation Prior to Contract Formation. When this purchase order is not accepted by written acknowledgment, this purchase order may be canceled by written or oral notice to the vendor prior to shipment of goods or beginning of performance of services.

b. Termination After Contract Formation. Unless otherwise agreed in writing, in addition to the rights and remedies governing transactions in goods in the Uniform Commercial Code, the Purchasing Agent may when the interests of the purchasing agency so require terminate this purchase order in whole or in part, for the convenience of the agency or institution. The Purchasing Agent shall give written notice of the termination to the vendor specifying the part of the purchase order terminated and when termination becomes effective. Upon receipt of the notice of termination, the vendor shall incur no further obligations except to the extent necessary to mitigate costs of performance. In the case of services or specially manufactured goods, the State shall pay reasonable settlement expenses, the contract price or rate for supplies and services delivered and accepted, the reasonable costs of performance on unaccepted supplies and services, and a reasonable profit for that unaccepted work, in accordance with the cost principles promulgated in accordance with section 24-107-101, Colorado Revised Statutes, as amended. In the case of existing goods, the State shall pay reasonable settlement expenses, the contract price for goods delivered and accepted, reasonable costs incurred in preparation for delivery of the undelivered goods, and a reasonable profit for that preparatory work. The amount of the termination liability under this paragraph shall not exceed the amount of the purchase order price plus a reasonable cost for settlement expenses. The vendor agrees to submit a termination proposal as well as reasonable supporting documentation, cost and pricing data, and a certification required by section 24-106-101, C.R.S., as amended, upon request of the Purchasing Agent.

22. **Purchase Order Approval.** This purchase order shall not be deemed valid unless it is executed by the Purchasing Agent for the purchasing state agency or institution. The State shall have no responsibility or liability for products or services delivered or performed prior to proper execution hereof.

23. **Fund Availability; Federal Funds Contingency.** Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this purchase order is funded in whole or in part with federal funds, this purchase order is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If this purchase order contemplates the purchase of goods to be delivered in a single installment, the State represents that it has set aside sufficient funds to make payment under this purchase order in accordance with its terms.

24. **Choice of Law.** This purchase order is made in the State of Colorado. The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of this purchase order. Unless otherwise specified in the solicitation or this order, venue for any judicial action arising out of or in connection with this purchase order shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in § 24-109-106, Colorado Revised Statutes, as amended, prior to commencing any judicial action against the State.

25. **Uniform Commercial Code.** All references in this purchase order to the Uniform Commercial Code shall mean the Uniform Commercial Code as adopted by the State of Colorado at Title 4, Colorado Revised Statutes, as amended.

26. **Non-discrimination.** The vendor agrees to comply with the letter and spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.